

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HANNAH M. LEONARD,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION,

Defendant.

CASE NO. C19-6099 BHS

ORDER DENYING MOTION FOR  
RECONSIDERATION

THIS MATTER is before the Court on Plaintiff Hannah Leonard's Motion for Reconsideration, Dkt. 77, of the Court's Order, Dkt. 76, granting Davis Law Group's (Leonard's prior counsel) request to subpoena the mediator, Thomas V. Harris, to ascertain Amtrak's response to the "blind" "mediator's proposal" that Leonard rejected. *See* Dkt. 63. These filings are related to Leonard's underlying Motion to Determine a Reasonable Attorneys' Fee, Dkt. 49.

Leonard argues that such a subpoena would violate the mediation privilege codified at RCW 7.07.050(3), and that there is no statutory basis to invade the mediation

1 privilege in this case. She argues that the information would have to come from a party, if  
2 at all, and not from the mediator himself. Dkt. 77 at 2.

3 The Court asked Davis to respond to Leonard's motion under LCR 7(h)(3), Dkt.  
4 80, and it has done so, Dkt. 81.

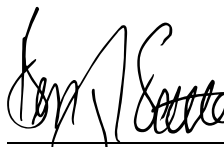
5 Davis argues that Leonard's motion does not meet the standard for  
6 Reconsideration, LCR 7(h) and Fed. R. Civ. P. 59(e). Dkt. 81 at 2. Davis also argues,  
7 persuasively, that Leonard waived any mediation privilege when she informed the Court  
8 that Amtrak had rejected the mediator's proposal. Dkt. 81 at 3 (citing RCW 7.07.040). He  
9 further demonstrates that the mediation agreement permitted the waiver of  
10 confidentiality, *id.* at 3, and that Mediator Harris agreed to disclose the information  
11 before Leonard filed her Motion for Reconsideration, *id.* at 4.

12 Leonard's Motion for Reconsideration, Dkt. 77, is DENIED. Davis may subpoena  
13 the mediator, and, as the Court previously ordered, Dkt. 76, may file (under seal) a short  
14 supplemental brief addressing what he learns. Leonard may file a short, sealed Reply  
15 within a week of that filing.

16 Leonard's underlying Motion to Determine a Reasonable Attorneys' Fee, Dkts. 49  
17 and 52, is RE-NOTED for December 2, 2022.

18 IT IS SO ORDERED.

19 Dated this 21st day of October, 2022.

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BENJAMIN H. SETTLE  
United States District Judge